



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 22<sup>nd</sup> Antidumping Duty Administrative Review and Final Result and Rescission, In Part, of the New Shipper Reviews; 2015-2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) published the *Preliminary Results* of the 22<sup>nd</sup> administrative review and two concurrent new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (China) on December 7, 2017. The period of review (POR) is November 1, 2015, through October 31, 2016. We made no changes to the margin calculated for mandatory respondent Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), or for new shipper respondent Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd. (Yudi), and continue to find that they made sales below normal value. In addition, we are rescinding the new shipper review with respect to Qingdao Joinseafoods Co., Ltd. and Join Food Ingredient Inc.'s (collectively, Join).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202-482-6251 or 202-482-4956, respectively.

SUPPLEMENTARY INFORMATION:

The mandatory respondents in this administrative review are: Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and Zhengyang. The new shipper review (NSR) respondents are Join and Yudi. Commerce published the *Preliminary Results* on December 7, 2017, in which it preliminarily determined that Zhengyang, Join, and Yudi sold merchandise to the United States at less than normal value.<sup>1</sup> We also preliminarily granted a separate rate to six companies which demonstrated their eligibility for separate rate status, but were not selected for individual examination.<sup>2</sup> We preliminarily rescinded the review with respect to the seven companies, including Harmoni, for which a valid review request did not exist.<sup>3</sup> In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. The petitioners,<sup>4</sup> the CFTG,<sup>5</sup> Zhengyang, Join, and Yudi timely filed case briefs, pursuant to our regulations.<sup>6</sup> Additionally, the petitioners, Join, and Harmoni timely filed rebuttal briefs.<sup>7</sup> The deadline for

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<sup>1</sup> See *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22<sup>nd</sup> Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017) (*Preliminary Results*) and accompanying Issues and Decision Memorandum (PDM).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>5</sup> The CFTG, at the time of initiation, consisted of Mr. Avrum Katz of Boxcar Farm, Mr. Stanley Crawford of El Bosque Farm, Ms. Susanne Sanford of Sanford Farm, and Mr. Alex Pino of Revolution Farm.

<sup>6</sup> See CFTG's Letter, "Case Brief: Filed on Behalf of the Coalition for Fair Trade in Garlic in the 22<sup>nd</sup> Administrative Review of Fresh Garlic from China," dated April 25, 2018 (CFTG's Case Brief); see also Zhengyang's Letter, "Fresh Garlic from the People's Republic of China – Case Brief," dated April 25, 2018. (Commerce rejected Zhengyang's Case Brief for containing unsolicited new factual information. see Commerce's Letter, "22nd Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Request for Removal of Untimely New Factual Information" dated May 15, 2018.Memorandum); see also Yudi's Letter, "Case Brief" dated April 25, 2018 (Yudi's Case Brief); see also Join's Letter, "Case Brief" dated April 25, 2018 (Join's Case Brief); see also the Petitioners' Letter, "Petitioners' Case Brief" dated April 25, 2018 (Petitioners' NSR Case Brief).

<sup>7</sup> See the Petitioners' Letter, "Petitioners' Rebuttal Brief," dated May 2, 2018 (Petitioners' NSR Rebuttal Brief); see also Join's Letter, "Rebuttal Case Brief" dated May 2, 2018 (Join's Rebuttal Brief); see also the Petitioners' Letter, "Fresh Garlic from the People's Republic of China: Petitioners' Rebuttal Brief," dated May 2, 2018 (the Petitioners' Rebuttal Brief); see also Harmoni's Letter, "Harmoni Administrative Review Reply Brief: 22<sup>nd</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," dated May 2, 2018 (Harmoni's Rebuttal Brief).

the final results of this review was originally April 9, 2018. On March 14, 2018, Commerce extended the deadline in this proceeding by 60 days to June 8, 2018.<sup>8</sup>

Based upon our analysis of the comments and information received, Commerce continues to find that the review request made by the Coalition for Fair Trade in Garlic (the CFTG) was not valid, and accordingly have rescinded the review with respect to seven companies, including the other mandatory respondent Harmoni, for which a valid review request does not exist. As discussed below, Commerce finds that Join withheld requested information, significantly impeded the new shipper review, and did not cooperate to the best of its ability. Accordingly, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we have used an adverse inference in selecting from among the facts otherwise available, and have found Join's sale not *bona fide*, and have rescinded the review of Join.

#### Scope of the Order

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see "Scope of the Order" in the accompanying Issues and Decision Memorandum.<sup>9</sup>

#### Partial Rescission of Administrative Review

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<sup>8</sup> See Memorandum, "Fresh Garlic from the People's Republic of China - 22<sup>nd</sup> Administrative Review (2015-2016): extension of Deadline for the Final Results of the Review," dated March 15, 2017.

<sup>9</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results and Final Rescission of the Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China; 2014-2015," dated concurrently with this notice (IDM).

As discussed in the IDM,<sup>10</sup> Commerce is rescinding the review with respect to seven companies, including mandatory respondent Harmoni, based on Commerce's determination that the CFTG's request for review was not valid. *See* Appendix IV for the companies for which administrative reviews have been rescinded in these final results.

#### Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the IDM. Appendix I provides a list of the issues which parties raised. The IDM is a public document and is on file in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the CRU. In addition, a complete version of the IDM can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed IDM and the electronic versions of the IDM are identical in content.

#### Changes since the *Preliminary Results*

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, and for the reasons explained in the IDM, including the application of facts available with an adverse inference, we revised our decision regarding Join's cooperation and have rescinded the new shipper review, as discussed below. Further, we have determined that the QTF-Entity is eligible for a separate rate.

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<sup>10</sup> *See* IDM at 6, 24.

### Rescission of New Shipper Review

As discussed in the IDM, Commerce has analyzed the *bona fides* of Join's single sale and found that it was not a *bona fide* sale, and thus not reviewable pursuant to section 751(a)(2)(B)(iv) of the Act.<sup>11</sup> Commerce reached this conclusion based on its consideration of the totality of circumstances, including: the timing of the payment, the parties' implementation of the terms of sale, incomplete information concerning the affiliates involved with the sale, missing or underreported expenses related to the sale, and the single sale. For a complete discussion *see* the IDM at 10-15, and Comment 5.

For the foregoing reasons, Commerce finds that Join's sale is not *bona fide*, and that the sale does not provide a reasonable or reliable basis for calculating a dumping margin. Accordingly, Commerce is rescinding the NSR with respect to Join.

### Final Determination of No Shipments

In the *Preliminary Results*, Commerce preliminarily determined that the companies listed in Appendix III timely filed "no shipment" certifications and did not have any reviewable transactions during the POR. Consistent with Commerce's assessment practice in non-market economy (NME) cases, we completed the review with respect to the companies listed in Appendix III. For the companies listed in Appendix III, CBP provided no evidence to contradict the claims of these companies of no shipments.

As noted in the "Assessment Rates" section below, Commerce intends to issue appropriate instructions to CBP for the companies listed below based on the final results of this review.

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<sup>11</sup> *See* IDM at 10-15, and Comment 5.

### PRC-Wide Entity

As discussed in the *Preliminary Results*, Commerce's policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>12</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate (*i.e.*, \$4.71/kg) is not subject to change. Aside from the no shipment companies discussed below, Commerce considers all other companies for which a review was requested, and which did not qualify for a separate rate, to be part of the PRC-wide entity. *See* Appendix II.

### Separate Rates

In the *Preliminary Results*, Commerce found that non-selected companies Jining Shunchang Import & Export Co., Ltd., Jinxiang Feiteng Import & Export Co., Ltd., Qingdao Sea-Line International Trading Co., Ltd., Shenzhenn Bainon Co., Ltd., Shenzhen Xinboda Industrial Co., Ltd., and Weifang Hongqiao International Logistics Co., Ltd., demonstrated their eligibility for a separate rate.<sup>13</sup> We continue to find that those six companies are eligible for a separate rate. As discussed in the IDM, Commerce granted the QTF-Entity separate status in these final results.<sup>14</sup>

In the *Preliminary Results*, we assigned the non-selected separate rate companies the dumping margin calculated for Zhengyang. No parties commented on this. We continue to use

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<sup>12</sup> *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>13</sup> *See Preliminary Results* at Appendix II.

<sup>14</sup> *See* IDM at 7-8.

Zhengyang's margin as the margin for the non-selected separate rate companies in these final results.

#### Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

<b>Exporter</b>	<b>Weighted-Average Margin (dollars per kilogram)</b>
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	\$2.69
Jining Shunchang Import & Export Co., Ltd.	\$2.69
Jinxiang Feiteng Import & Export Co., Ltd.	\$2.69
Qingdao Sea-Line International Trading Co., Ltd.	\$2.69
QTF-Entity <sup>15</sup>	\$2.69
Shenzhen Bainong Co., Ltd.	\$2.69
Shenzhen Xinboda Industrial Co., Ltd.	\$2.69
Weifang Hongqiao International Logistics Co., Ltd.	\$2.69

#### Final Results of New Shipper Review

The weighted-average dumping margin for the new shipper review:

<b>Exporter</b>	<b>Weighted-Average Margin (dollars per kilogram)</b>
Zhengzhou Yudi Shengjin Agricultural Trade Co., Ltd.	\$3.19

#### Assessment Rates

Pursuant to section 751(a)(2)(A) and (C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review, and the new shipper reviews.

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<sup>15</sup> The QTF-Entity includes: Qingdao Tiantaixing Foods Co., Ltd.; Qingdao Tianhefeng Foods Co., Ltd.; Qingdao Beixing Trading Co., Ltd.; Qingdao Lianghe International Trade Co., Ltd.; Qingdao Xintianfeng Foods Co., Ltd.; Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting; *see Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 21<sup>st</sup> Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017), and accompanying Issues and Decision Memorandum at Comment 4.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).<sup>16</sup> Where we calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.<sup>17</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, we will instruct CBP to collect the appropriate duties at the time of liquidation.<sup>18</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>19</sup> We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, we will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if we determine that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide entity rate.<sup>20</sup>

As Commerce is rescinding the NSR with respect to Join, we are not making a determination as to whether or not Join qualifies for a separate rate. Therefore, Join remains part

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<sup>16</sup> See 19 CFR 351.212(b)(1).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See 19 CFR 351.106(c)(2).

<sup>20</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).



of the PRC-wide entity. The PRC-wide entity is not under review in the ongoing administrative review. Accordingly, Join's entry will be assessed at the rate equal to the cash deposit of estimated antidumping duties required on its merchandise at the time of entry, or withdrawal from warehouse, for consumption. We intend to issue liquidation instructions for any entries during the relevant period made by Join 15 days after publication of this notice.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

#### Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

### Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

*Dated: June 8, 2018.*

Gary Taverman,  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance.

## **Appendix I**

### **List of Issues Discussed in the Issues and Decision Memorandum**

#### *Administrative Review*

1. Whether Section 751 of the Act Requires Commerce to Conduct an AR of Harmoni Following the CFTG's Request for Review
2. Whether the CFTG's Review Request was Valid, and Whether the Members of the CFTG are Producers or Wholesalers of a Domestic Like Product
3. Whether Harmoni and the FGPA Obstructed or Impaired Legitimate Government Activity

#### *New Shipper Reviews*

4. Whether Yudi's Sale was Made on a *Bona Fide* Basis
5. Whether Join's Sale was Made on a *Bona Fide* Basis
6. Whether Commerce Properly Selected Romania as the Surrogate Country

## **Appendix II**

### **List of Companies Under Review Subject to the PRC-Wide Rate**

1. China Union Agri. (Qingdao) Co., Ltd.
2. Juxian Huateng Organic Ginger Co., Ltd.
3. Qingdao Jiashan Trading Co., Ltd.
4. Shandong Helu International Trade Co., Ltd.
5. Weifang Wangyuan Food Co., Ltd.
6. Zhengzhou Yudishengjin Farm Products Co., Ltd.

### **Appendix III**

#### **Companies That Have Certified No Shipments**

1. Jinan Farmlady Trading Co., Ltd.
2. Jining Shengtai Fruits & Vegetables Co., Ltd.
3. Jining Yifa Garlic Produce Co., Ltd.
4. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
5. Shijiazhuang Goodman Trading Co., Ltd.

## **Appendix IV**

### **Companies for Which Administrative Reviews Have Been Rescinded**

1. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
2. Juxian Huateng Food Co., Ltd.
3. Qingdao Hailize (Sea-Line) International Trading Co., Ltd.
4. Qingdao Jiuyihongrun Foods Co., Ltd.
5. Qingdao Ritai Food Co., Ltd.
6. Zhengzhou Harmoni Spice Co., Ltd.
7. Zhonglian Nongchan Co., Ltd.

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